

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

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JOHN R. DURSO, MURRAY J. MORRISSEY
RAYMOND VETRANO, DEBRA SERVIDO,
FALLON AGER NELSON, JON
GREENFIELD, JOHN CATSIMATIDIS,
ANGELO AVENA, MORTON SLOAN, and
JACOB DIMANT, as Trustees and Fiduciaries
of the LOCAL 338 RETIREMENT FUND,

ORDER
13-cv-5240 (ADS)(GRB)

Plaintiffs,

-against-

NUNZIO & SONS,

Defendant.

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APPEARANCES:

Friedman & Anspach

Attorneys for the Plaintiffs

1500 Broadway

Suite 2300

New York, NY 10036

By: Anusha Rasalingam, Esq.
Cristina E. Gallo, Esq., of counsel

NO APPEARANCE:

Nunzio & Sons

SPATT, District Judge.

On September 19, 2013, the Trustee Plaintiffs of the Local 338 Retirement Fund (the “Plaintiffs”) commenced this action to compel the Defendant Nunzio & Sons (the “Defendant”) to pay its withdrawal liability assessment plus interest; the greater of additional interest or liquidated damages; and attorneys’ fees and costs, pursuant to the Employee Retirement Income Security Act of 1974, as amended (“ERISA”), 29 U.S.C. § 1001, *et seq.*, 29 U.S.C. §§ 1132,

1145, 1381, 1383, 1399, and 1451, and the Reaffirmation and Restatement of the Agreement and Declaration of Trust of the Local 338 Retirement Fund.

On December 11, 2013, the Clerk of the Court noted the default of the Defendant. On January 27, 2014, the Plaintiffs moved for a default judgment. On January 28, 2014, the Court referred this matter to United States Magistrate Judge Gary R. Brown for a recommendation as to whether the motion for a default judgment should be granted, and if so, (1) whether damages should be awarded, including reasonable attorney's fees and costs, and (2) whether any other relief should be granted. The Clerk of Court is to note the referral.

On August 18, 2014, Judge Brown issued a thorough Report and Recommendation that the motion for default judgment be granted. Judge Brown further recommended that the Plaintiffs be awarded the aggregated sum of \$75,867.85, consisting of \$32,175 in unpaid withdrawal liability, \$17,375 in interest, \$17,375 in liquidated damages, \$1,593.75 in attorneys' fees, and \$720 in costs.

In reviewing a report and recommendation, a court "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1)(C). "To accept the report and recommendation of a magistrate, to which no timely objection has been made, a district court need only satisfy itself that there is no clear error on the face of the record." Wilds v. United Parcel Serv., 262 F. Supp. 2d 163, 169 (S.D.N.Y. 2003)(citing Nelson v. Smith, 618 F. Supp. 1186, 1189 (S.D.N.Y. 1985)). The Court has reviewed Judge Brown's Report and Recommendation, and finds it be persuasive and without any legal or factual errors. There being no timely objection to Judge Brown's Report, the Court adopts the Report.

For the foregoing reasons, it is hereby:

ORDERED, that Judge Brown's Report and Recommendation is adopted in its entirety and the Plaintiffs' motion for a default judgment is granted; and it is further

ORDERED, that the Plaintiffs are awarded the aggregated sum of \$75,867.85, consisting of \$32,175 in unpaid withdrawal liability, \$17,375 in interest, \$17,375 in liquidated damages, \$1,593.75 in attorneys' fees, and \$720 in costs.

ORDERED, that the Clerk of the Court is directed to enter judgment as set forth above, and it is further

ORDERED, that upon the entry of judgment, the Clerk of the Court is directed to close the case.

SO ORDERED.

Dated: Central Islip, New York
September 24, 2014

Arthur D. Spatt
ARTHUR D. SPATT
United States District Judge